

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA;
AMERICAN HOTEL AND LODGING
ASSOCIATION; ASSOCIATED BUILDERS
AND CONTRACTORS; ASSOCIATED
GENERAL CONTRACTORS OF AMERICA;
COALITION FOR DEMOCRATIC
WORKPLACE; INTERNATIONAL
FRANCHISE ASSOCIATION; LONGVIEW
CHAMBER OF COMMERCE; NATIONAL
ASSOCIATION OF CONVENIENCE
STORES; NATIONAL RETAIL
FEDERATION; RESTAURANT LAW
CENTER; TEXAS ASSOCIATION OF
BUSINESS; and TEXAS RESTAURANT
ASSOCIATION,

Plaintiffs,

v.

NATIONAL LABOR RELATIONS BOARD;
LAUREN MCFERRAN, Chair; MARVIN
KAPLAN, Board Member; GWYNNE
WILCOX, Board Member; and DAVID
PROUTY, Board Member,

Defendants.

Civil Action No. 6:23-cv-00553-JCB

**UNOPPOSED MOTION BY THE AMERICAN HOSPITAL ASSOCIATION
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

The American Hospital Association respectfully moves for leave to file the *amicus curiae* brief simultaneously entered in the docket for this matter. This Court has inherent authority to allow the filing of *amicus curiae* briefs even where local rules do not provide for them. *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990); accord *United States v. Davis*, 180 F. Supp. 2d 797, 799–800 (E.D. La. 2001). The AHA’s *amicus* brief should be allowed because the AHA brings a unique perspective on this dispute and its participation will be “useful” to the Court. *Id.* As the brief explains, the challenged Final Rule threatens major harm to the AHA’s member hospitals by reclassifying them as joint employers of many contract workers on which hospitals heavily rely. The brief explains why the Board’s promulgation of the Final Rule was arbitrary and capricious for failing to address the AHA’s concerns about the disruptive and harmful effects of the Final Rule. See *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 449 (5th Cir. 2021). The brief also explains why the Board was wrong to conclude that it lacked discretion under the statute to tailor the Final Rule in a way that would have accommodated the AHA’s concerns.

The parties do not oppose the filing of this *amicus* brief. Plaintiffs have affirmatively consented, and counsel for Defendants indicated that they “take no position.” The AHA respectfully requests that the Court accept and consider its brief.

Date: November 20, 2023

Respectfully submitted,

/s/ Joanne Bush

Joanne R. Bush

JONES DAY

Texas Bar No. 24064983

717 Texas, Suite 3300

Houston, Texas 77002

Phone: (832) 239-3782

Fax: (832) 239-3600

Email: jrbush@jonesday.com

Anthony J. Dick

D.C. Bar No. 1015585

William J. Strench

D.C. Bar No. 1781271

JONES DAY

51 Louisiana Ave. NW

Washington, DC 20001

Phone: (202) 879-3939

Fax: (202) 626-1700

Email: ajdick@jonesday.com

Counsel to Amicus Curiae

American Hospital Association

CERTIFICATE OF SERVICE

The undersigned certifies that on November 20, 2023, the foregoing document was electronically submitted with the clerk of the court for the United States District Court, Eastern District of Texas, using the electronic case file system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Joanne Bush

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA;
AMERICAN HOTEL AND LODGING
ASSOCIATION; ASSOCIATED BUILDERS
AND CONTRACTORS; ASSOCIATED
GENERAL CONTRACTORS OF AMERICA;
COALITION FOR DEMOCRATIC
WORKPLACE; INTERNATIONAL
FRANCHISE ASSOCIATION; LONGVIEW
CHAMBER OF COMMERCE; NATIONAL
ASSOCIATION OF CONVENIENCE
STORES; NATIONAL RETAIL
FEDERATION; RESTAURANT LAW
CENTER; TEXAS ASSOCIATION OF
BUSINESS; and TEXAS RESTAURANT
ASSOCIATION,

Plaintiffs,

v.

NATIONAL LABOR RELATIONS BOARD;
LAUREN MCFERRAN, Chair; MARVIN
KAPLAN, Board Member; GWYNNE
WILCOX, Board Member; and DAVID
PROUTY, Board Member,

Defendants.

Civil Action No. 6:23-cv-00553-JCB

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION BY THE AMERICAN
HOSPITAL ASSOCIATION
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

After considering the Unopposed Motion of the American Hospital Association, the Court hereby finds that there is good cause to grant the motion. Therefore, the Court **GRANTS** the Motion and deems the *amicus curiae* brief simultaneously entered on the docket filed as of the date *amicus* filed the Motion.